FOR MYSORE STATE

3-11-53.

M Law (1954) Department.

Parsis & Suppdt

Ib SERIES.

G.O. No. 108

Dated 3 - 5 - 1954

[Despatch Abstract.]

Legal Asst — S. Kamara dr — C-5

No: 525 g 1953 — Dr Ramaprasad, Pattan

- Tirai Raj .. Asst. Conservator of forests

in another district - Samelin

Revenue Department

**

Subject:

SUITS - (South Kanara) O.S.No.525/53 on the file of the District Munsif Puttur - C.C.No.55/53 on the file of the Stationary Sub-Magistrate, Puttur Malicious prosecution for damages - Defence - Sanction - Report submitted.

BP.Rt.No.1456. Madras. Dated the 22nd March 1954.

From: Sri W.R.S. Sattianathan, I.C.S., Commissioner of Land Revenue
Sri P. Sivasankaran Pillai, I.A.S., Secretary, Board of Revenue

READ: From the Collector of South Kanara Ref.A.3.21771/53 dated 11-3-1954.

Resolution:

Submitted to the Government.

2. The Board submits that it has no remarks to offer on the subject matter of the suit does not relate to the Revenue Department.

FIRST ASSISTANT SECRETARY
23 MAR 1954

(True extract)

for Secretary.

To
The Secretary to Government, Agriculture Department, Madras.
(District Forest officer's File C.No.4613/52-C4)
-do- C.No.4336/53-C4 and Records of SSM, Puttur CC.55/53)

Copy to the Chief Conservator of Forests, Madras.

p.t.o.

Copy of Ref.A3.21771/53, dated 11-3-1954, from the Collector of South Kanara, Mangalore, to the Secretary, Board of Revenue, Madras.

Sub:- SUITS - South Kanara District O.S.No.525/53 on the file of the Dt. Munsif of Puttur Criminal Justice - C.C.No.55/53 on the file of the S.S.M.Puttur - Malicious prosecution - for damages - Suit filed by Sri H.V. Rasquinha against (1) Sri K. Durairaj and 2. The State of Madras - Defence of the suit Sanction - Requested -

I enclose a copy of the plaint in O.S.No.525/53 on the file of the Dt. Munsiff's court, Puttur filed by Sri H.V. Rasquinha of Vittal casba village, Puttur Taluk, against 1. Sri K. Durairaj. Asst. Conservator of Forests, Nilambur, South Kanara and 2. The State of Madras.

2. The facts of the case are as follows: Sri K. Durairaj, 1st Defendant was the Asst. Conservator of Forests in South Kanara during December, 1952. He was camping at the Vittal Traveller's bungalow from 1-12-1952 to 5-12-1952 for enquiry into an allegation petition against Forest Guard Laxman Purusha and Forester Abbas filed by one Abbas Beary. On 5-12-1952, the petitioner Abbas Beary was asked by the Asst. Conservator of Forests (Ist defendant) to wait at the 27th mile stone for going to the Kalanjamale R.F., in connection with the enquiry. While the 1st defendant with the Forest Guard Laxman Purusha, a Forester Abbas and Forest Guard Venkatramana came near the 27th mile stone and moved into the Reserved Forest the plaintiff H. V. Rasquinha and some one else who were standing at the 27th mile stone followed them. Th 1st defendant asked the plaintiff not to follow them but to meet him at the Travellers Bungalow in the noon. But the plaintiff did not heed and persisted in following them into the Reserved Forest. Thereupon the 1st defendant asked Forest Guard Laxman Purusha to advise the plaintiff to go away and when Laxman Purusha asked the plaintiff to go out of the reserved forest the latter abused the Forest Guard and raised his hand to assault him (F.G. Laxman Purusha). Immediately the 1st defendant sent a note to the Station House Officer, Vittal requesting for police aid. The Station House registered the 1st defendants note as an F.I.R. under Section 353 I.P.C., and after holding investigation laid a charge sheet on 26-12-1952 in the Court of the Stationary Sub Magistrate, Puttur. The case ended in acquittal. The plaintiff has thus filed this suit representing that the report sent by the 1st defendant to the Station House Officer on 5-12-1952 was false and malicious and reasonable grounds. It has also been pointed out in the plaint that the plaintiff has suffered damages as a result of the prosecution and that there has been damage to his reputation and property and that he had to suffer mental pain and anxiety. It is also stated that his reputation has been lowered in the estimation of the public and that he had to leave his avocation and attend the criminal court several times and that he had to spend money to defend himself properly. On all these counts he claims Rs.1100/- as damages from the defendant. The 1st defendant committed these acts in his official capacity as a public servant and as such the State of Madras has been impleaded as a necessary party in the suit. The notice dated 12-9-1953 under Section 80 C.P. Code issued by the plaintiff to the Collector of South Kanara representing the state of Madras was received in this office on 15-9-1953 and no final reply has been given to it.

3. The defence at public expense of Sri K. Durairaj 1st defendant in the suit has been provisionally sanctioned by the Chief Conservator of Forests Madras in his L.Dis.No.867/54-D1, dated 9-1-1954.

4. The draft written statements to be filed on behalf of both the defendants prepared by the Pleader for Government, Puttur and got scrutinized by the Government Pleader, South Kanara are enclosed. The Government Pleader, has not given any opinion as to whether the suit is legally maintainable. I request that the defence of the suit may be sanctioned and the draft written statements approved and the orders communicated to me as early as possible.

p.t.o.

5. The information required under B.S.O.93-3, is as follows:-

1. Date of plaint. 10-12-1953.
2. Date of service of summons on the Collector. 22-12-1953.
3. Date of hearing. 23-3-1954.
4. Explanation for delay where a clear fortnight is not allowed to the Board for consideration. The report of the Dt. Forest Officer, S. Kanara with the connected records was received in this office on 8-1-1954. These records which were sent to the Pleader for Government Puttur on 10-1-1954 for preparing the draft written statement were received back only on 5-3-1954. Immediately after they were received in this office they were sent to the Government Pleader, South Kanara for further scrutiny. They were received back from the Government Pleader on 9-3-1954. This report could not therefore be submitted earlier. I request that the orders sanctioning the defence of the suit and approving the written statements may be passed urgently and communicated to me by 20-3-1954 as the Pleader for Government Puttur has reported that the written statements have to be filed on 23-3-1954 and that no further time may be granted by the Court.

6. The following documents are enclosed for reference and return.

1. Copy of the plaint.
2. Copy of the suit notice.
3. Copy of the Govt. Pleaders letter Ref.No.1316/53-54, dated 8-3-1954.
4. Copy of the draft written statements.
5. File bearing C.No.4613/52-C4, of the Dt. Forest Officer, South Kanara containing pages 1-22.
6. File bearing C.No.4336/53-C4, of the Dt. Forest Officer, South Kanara containing pages 1-28.
7. Records of C.C.55/53 of the Stationary Sub Magistrate, Puttur.

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Court fee of Rs.119-15-0 is paid

In the Court of District Munsif,
Puttur.

O.S.No.525/1953.

Between:

H.V. Rasquinha. .. Plaintiff.

-Vs-

1. Sri K. Durai Raj.
2. Province of Madras represented by
the Collector of South Kanara. .. Defendants.

PLAINT UNDER SECTION 26 C.P.C.

Plaintiff begs to state as follows:

1. The address of plaintiff and defendants for service of process on them is as below.

(a) Plaintiff is the son of A.S. Rasquinha, Roman Catholic Wargdar, a merchant aged 35 years, residing in Vittal Kasaba, Puttur taluk, Post Vittal S.Kanara.

PLEADER FOR PLAINTIFF.

(b) 1st defendant is now the Assistant Conservator of Forests Nilambur Division - South Malabar, Post - Nilambur.

2nd defendant is the province of Madras represented by the Collector of South Kanara, Mangalore, Post - Mangalore.

2. Plaintiff is a respectable Wargdar, and a merchant in Vittal Kasaba having a status and position in life. He is a member of Vittal Panchayat and of T.S.S.A.Board of Puttur taluk.

3. 1st defendant was an Assistant Conservator of Forest in South Kanara in the month of December, 1952 and thereafter for some time. While he was so on duty and had come to Vittal in his official capacity for official work and was camping in Vittal he had taken a statement of plaintiff on 4-12-1952 in connection with an enquiry and petition filed by Ukkuda Abbas Beary against forester Abbas and guard Laxmana Purusha alias Rao who were alleged to have taken illegal gratification and permitted or connived at felling of trees from Kalanjimale reserve forest of vittal range. Plaintiff had produced before the 1st defendant two reports on three sheets serial No.10, 11 and 12 written by guard Laxman Purusha against Vastovayya Krishnayya and Subraya who had cut a road in reserve forest of Kalanjimale without permissionfor illicit transporting timber from Government land in the said Reserve Kalanjamale forest. The 1st defendant had on ~~xxxxx~~ 4-12-1952 directed plaintiff to appear before him with the petitioner Abbas at 8 A.M. on 5-12-1952 at the 27th mile stone near the Reserve. In obedience to the said direction plaintiff and Abbas waited at the said time on 5-12-1952 near the 27th mile stone and when 1st defendant, the said guard, and forester, entered the Kalanjamale reserve, plaintiff and Ukkuda Abbas followed the 1st defendant as desired by 1st defendant the previous day to show the stumps of illicitly felled trees at the connivance or the guard and the forester, when plaintiff and Abbas followed 1st defendant for some distance in the Reserve at about 8-30 A.M. on 5-12-1952, forest guard and Laxmana Purusha, fearing that the allegations against him will be proved upto the hilt and that the stumps of illicitly felled trees would be pointed out by Ukkuda Abbas in the presence of plaintiff Guard Purusha Alias Rao accosted plaintiff in a threatening and insulting way and asked him to clear out of the Reserve and not to follow them any further. Plaintiff replied that as desired and directed by 1st defendant he was there and that the guard Laxman Purusha alias Rao had no right or power to abuse threaten or command him to clear out. Ukkuda Abbas refused thereafter to accompany 1st defendant and his staff unless plaintiff was with him. There was exchange of some hot words between Ukkuda Abbas and Guard Laxmana Purusha. 1st defendant

p.t.o.

1st defendant thereafter permitted plaintiff and Ukkuda Abbas to leave the spot and thereafter plaintiff and Ukkuda Abbas went away therefrom. Nothing else happened there at 8-30 A.m. in the said reserve forest of Kalanjamale or at any time that day (5-12-1952). No offence of any kind under any law was committed at the place or time by plaintiff or Ukkuda Abbas. The 1st defendant instead of acting bonafide and proceed with the enquiry embarked upon by him twisted the facts and sent a false and malicious report against plaintiff to the Vittal Police Station on 5-12-1953 hashing up the incidents as they happened with view to shield the guard and forester Abbas from the acts compkained against them. Being annoyed at the allegations against his subordinates and out of malice, without any probable or reasonable ground the said report was sent to the Vittal Police Station under Section 353 I.P.C. with a request to arrest plaintiff through two constables to be sent immediately. No offence was committed under Section 353 I.P.C. by plaintiff and 1st defendant was fully aware of this. 1st Defendant played into the hands of the forest guard and Forester concerned and malfide acted with malice in sending the false report, which act of 1st defendant was not and could not possibly be in the discharge of his duties as a public servant

4. The Vittal Police as desired by the 1st defendant and under his instigation sent a charge sheet against plaintiff on 26-12-1952 under Section 353 I.P.C. The case was taken on file against the plaintiff by the second class magistrate, of Puttur as C.C.No.55/1953 on his file and the plaintiff after trial was acquitted on 24-7-1953 and his innocence was vindicated by the trial Court.

5. By sending the said report on 5-12-1952 against the plaintiff and getting him charge-sheeted the 1st defendant prosecuted plaintiff in a criminal Court of Law having set the law in motion as prosecution. The proceedings and the case however ended in acquittal. 1st Defendant maliciously prosecuted plaintiff without probable and reasonable grounds. Plaintiff has suffered damages as a result of the same. There has been damage to his reputation and property. He had to suffer mental paid and anxiety. His reputation has been lowered in the estimation of the Public. He had to leave his avocation and attend the criminal court several times. He had to spend money to defend himself properly. He had to pay rupees one hundred to his counsel as fees to defend him, in addition to other charges for obtaining necessary records. On all these counts plaintiff is entitled to Rs.1100/- as damages from the defendants or such of them as is liable.

6. Defendants were given suit notices, as required under Section 80 of the C.P.C. 1st defendant received the suit notice on 1-9-1953 and the second defendant received the notice on 15-9-1953. But they have not chosen to settle the matter nor sent replies. Hence plaintiff is constrained to file this suit for damages.

7. As the 1st defendant in his Official capacity as a Public servant and forest Officer committed these acts complained under colour of his office and as second defendant to whom the 1st defendant is subordinate is also a necessary and proper party to the suit, he is also impleaded in the shit.

8. Thecause of action for this suit arose on 5-12-1952, 24-7-1953, 1-9-1953 and 15-9-1953 at Vittal and Puttur within the jurisdiction of this Court.

9. The value of this suit for court fees and jurisdiction is Rs.1100-0-0 and under Section 7(1) schedule 1 article 1 a court fee of Rs.119-15-0 is herewith paid.

10. Prays for a decree and judgment against defendants.

(a) Directing them, or such of them as are found liable to pay plaintiff damages for the acts complained of and for malicious prosecution. Rs.1100/- as modestly estimate.	1100-0-0.

(b) Costs of this suit and interest at 6%.

(c) Such other reliefs as to the court may seem fit to be granted in the circumstances of the suit.

Puttur, South Kanara.
30-11-1953.

Sd./- x x x x
Pleader for plaintiff.

I, the abovenamed plaintiff do hereby declare that what is stated in paras 1 to 10 is true to my knowledge and belief and I believe the same to be true.

Putur, South Kanara.
10-12-1953.

Sd./- x x x x x x
for Collector.

(True copy).

for Secretary.

rm.22/3.

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S.No.525/1953.

Between R.V. Basquinha Plaintiff

Vs.

Dorairaj and another .... Defendants.

Written statement of Ist defendant Sri K. Dorairaj, Assistant Conservator of Forests Filed under Order VIII Rule 1 C.P.C.

The defendant abovenamed begs to state as follows:

1. That the Plaintiff's suit as against this defendant is frivolous, vexatious and unsustainable at law. It is only intended to harass this defendant and to create unnecessary sensation.

2. It is true that this defendant was the Assistant Conservator of Forests, in South Kanara district in the month of December 1952 and that he had camped at Vittal between 1-12-52 and 5-12-1952 in connection with his official duties. It is also true that this defendant had asked petitioner Ukkuda Abbas to meet him at the 27th mile stone near Kalanjimale Reserve Forest limits on 5-12-1952 morning in connection with enquiry into an allegation petition filed by him against Forester Abbas and Forest guard Laxmana Purusha and accordingly he had met him, and he proceeded to the Kalanjimale Reserve Forest along with Petitioner Abbas and also the Forest guard Laxmana Purusha and Forester Abbas. The plaintiff (and) also accompanied petitioner Abbas Beary, and as we proceeded in the Reserve Forest, the Plaintiff told this defendant that he had something to say against Forest guard Laxamana Purusha but this defendant requested him to wait in the Traveller's Bungalow at Vittal and he would finish other inspection work meanwhile. But as the Plaintiff persisted in following us this defendant instructed Forest Guard Laxamana Purusha to ask the Plaintiff to go away. Whereupon there was an exchange of hot words between the Plantiff and the said Forest Guard and the Plaintiff attempted to assault the Forest Guard in the presence of this defendant. As this defendant apprehended trouble and obstruction to Official duties he sent a report to the Station House Officer Vittal to take action against the Plaintiff and consequently he was charge sheeted by the Vittal Police for an offence punishable under Section 353 I.P.C. of the Code.

3. That this defendent while sending a report to the Vittal Police acted in good faith and without any malice and in due discharge of his official duties and cannot be said to be without any reasonable or probable cause.. The conduct of this defendant is not blame-worthy and his action cannot be questioned or impugned as actuated by any malice or ill-will. The parties are perfect strangers to this defendant and he cannot have any malice or ill-will whatsoever. This defendant acted in perfect good faith and without any malice while setting the law in motion against the Plaintiff.

4. That the charge against the plaintiff under Sec.353 I.P.C. failed and the plaintiff was acquitted in C.C.No.55/53 on the file of the Spl. II Class Magistrate, Puttur, as there were some discrepancies in the prosecution evidence with regard to the scene of offence and the prosectuion evidence was not enough to prove an offence punishable under Sec.353 I.P.C. beyond all reasonable doubts. The mere fact of acquittal by the Criminal Court does not tantamount to malicious prosecution.

p.t.o.

5. This defendant neither intended to shield his subordinates nor instigated the Vittal Police to lay a false chargesheet against the plaintiff. All the plaint allegations to this effect are baseless and unjustified and are denied herewith.

6. That as this this defendant acted in good faith and in due discharge of his duties to enforce the provisions of the Madras Forest Act, this suit against this defendant is barred and opposed to Section 61 of the Madras Forest Act.

7. The notice issued on behalf of the Plaintiff under Section 80 C.P.C. is neither valid nor sufficient.

8. That the plaintiff has not suffered any damages and the quantum of damages claimed is excessive.

9. That the plaintiff has no cause of action for this suit and is not entitled to any reliefs in this suit.

10. That all other allegations in the plaint not specifically traversed herein are denied.

11. It is therefore prayed that the plaintiff's frivolous suit be dismissed with compensatory costs of this d defendant.

Campl
Date.

1st Defendant Adv. for Govt.

I, 1st defendant Durairaj, K. Assistant Conservator of Forests, do hereby declare that the facts stated above are true to the best of my knowledge and belief.

Camp.
Date:

1st Defendant.

(True copy)

Copy of Ref.No.1316/53-54 dated 8th March 1954 from the Advocate and Government Pleader, South Kanara to the Collector of S.Kanara Mangalore. Opinion No.161/53-54.

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Sub: SUITS - O.S.No.525/53 on the file of the District Munsif of Puttur Suit filed by Sri H.V. Rasquinha against (1) Sri K. Durai Raj and (2) The Province of Madras - Draft Written Statement - scrutinised opinion - given.

Ref: Your N. Ref.A.3.21771/53 dated 6-3-1954.

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I have gone through the Draft Written Statement sent by the Pleader for Government, Puttur. It is quite alright and I do not think that it requires any correction.

However I would like to add that in the statement to be filled on behalf of the Second Defendant (The State of Madras) to para 9, the following sentence may be added if deemed fit.

"This defendant is not responsible or liable for the tortious acts of any of its subordinates and without prejudice to the above contentions, if the action of the First Defendant is construed against him he alone should be personally held responsible and the State is not at all responsible for the personal acts of its subordinates"

The file sent to me is returned herewith. Please acknowledge the receipt of the same.

(True copy)

p.t.o.

P 11

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S.No.525/19[illegible]

Between

H. V. Rasquinha — Plaintiff

Versus

Dorairaj and another — Defendants.

Written statement of 2nd Defendant and State of Madras filed under Order VIII Rules C.P.C.

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The defendant abovenamed stated as follows:

. The plaintiff's suit is unjust and [illegible]-inable at law.

2. That the 1st defendant as Assistant Conservator of Forests in the course of his official duties sent a report to the Vittal Police apprehending trouble and obstruction to official duties when the plaintiff assaulted the Forest guard Laxmana Purusha after an exchange of hot words between them in the presence of the 1st defendant. The said report was sent bonafide and in good faith, and in due discharge of his official duties and without any malice whatsoever and hence, cannot be said to be without any reasonable or probable cause. The conduct of the 1st Defendant in sending a report to the Vittal Police against the Plaintiff in the course of his official duties is not reproachful or blame worthy and the said action of the 1st defendant was bonafide and in good faith and not actuated by any malice whatspever. (India Penal Code)

3. That the charge against the plaintiff for offence under section 353 IPC failed and the plaintiff was acquitted in C.C.No.55/1953 on the file of the Stry.II. Class Magistrate, Puttur as there were discrepancies in the prosecution evidence with regard to the seene of offence, and the Prosecution evidence could not prove an offence under section 353 IPC beyond all reasonable doubts. The mere fact of acquittal by the Criminal Court does not tantamount to malicious prosecution.

4. The 1st defendant neither intended to shield his subordinates nor instigated the Vittal Police to lay a false charge sheet against the Plaintiff and all the Plaint allegations to that effect are baseless and unjustified and have been duly denied by the 1st defendant.

5. That as the 1st defendant acted in good faith and in due discharge of his duties, to enforce the provisions of the Madras Forest Act, the suit is barred and opposed to section 81 of the Madras Forest Act, 1882 (Madras Act V of 1882).

6. That the notice issued on behalf of the Plaintiff under section 80 C.P. is neither valid nor sufficient under law.

7. That the plaintiff has not suffered any damages and at any rate the quantum of damages claimed is excessive.

8. That the plaintiff has no cause of action for this suit and is not entitled to any reliefs, in this suit.

9. That this defendant The State of Madras is not a necessary party to this suit which is an action based on torts. This defendant is not responsible or liable for the tortious acts of any of its subordinates and without prejudice to the above contentions, if the action of the First defendant is construed against him he alone should be personally held responsible and the State is not at all responsible for the personal acts of his subordinates.

p.t.o.

10. That all other allegations in the plaint not specifically traversed herein are denied.

11. It is therefore prayed that the plaintiff's suit be dismissed with compensatory costs in the defendants.

Advocate for Government.

Madras
-3-54 Second Defendant.

I, A. Mahalingam Chettiar, Collector of South Kanara do hereby declare that the facts stated above are true to the best of my knowledge and belief.

Mangalore
-3-1954 Second defendant.

(True copy)

REGISTERED LAWYER'S NOTICE.

To: The Collector of South Kanara, Mangalore
Representing State of Madras.

From
H. Pundarik Bhat, B.A. B.L, Vakil Puttur, South Kanara.

Gownen Sri K. Durai Raj was the Assistant Conservator of Forests of South Kanara on 5-12-1952 he sent a report against Sri H.V. Rasquinha son of ... Rasquinha of Vitla Khasba at the instance of the enemies of H.V. ... i.e. ... alias Rao Forest Guard and Forests, ... and got a case filed against him in C.C. ...52/52 to the file of Puttur Second Class Magistrate through the Vittal Police on 26-12-52. The case was tried and ended in acquittal on 24-7-53. The complaint and allegations in the report were false and malicious to the knowledge of the said ... and under the evil advice of the above said Forester and ... who have axes to grind against Rasquinha the said report was sent to the Police under the Official powers vested in the A.C.F. The Judgment and the evidence will be ... the report or case and also the malicious ... it. As the prosecution was without proable or reasonable grounds and was malicious and case false my client's reputation had thereby been lowered in Public estimation. He had to expend large sums for his defence, hence attendance in court leaving his avocation and had mental worry add pain. A suit notice has been sent on 29-8-1953 to the said A.C.F. for damages of 1100/- One thousand one hundred claimed. As the State of Madras will have also to be impleaded as a defendant and a notice to the State is also a condition precedent to the suit, this notice is sent to you under Section 80 C.P.C. as required. The costs of this suit will also be charged against the defendants liable.

(True copy)

for Secretary.

ARS.22/3/54.

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR

O.S.No.525/1953.

Between

R.V. Basquinha — Plaintiff

Vs.

Dorairaj and another — Defendants.

Written statement of 1st defendant Sri K. Dorairaj Assistant Conservator of Forests filed under Order VIII Rule 1 C.P.C.

The defendant abovenamed begs to state as follows:

1. That the Plaintiff's suit as against this defendant is frivolous vexatious and unsustainable law. It is only intended to harass this defendant and to create unnecessary sensation.

2. It is true that this defendant was the Assistant Conservator of Forests, in South Kanara district in the month of December 1952 and that he had camped at Vittal between 1-12-52 and 5-12-1952 in connection with his official duties. It is also true that this defendant had asked petitioner Ukkuda Abbas to meet him at the 27th mile stone near Kalanjimale Reserve Forest limits on 5-12-1952 morning in connection with enquiry into an allegation petition filed by him against Forester Abbas and Forest guard Laxmana Purusha and accordingly he had met him, and he proceeded to the Kalanjimale Reserve Forest, the plaintiff along with Petitioner Abbas and also the Forest guard Laxmana Purusha and Forester Abbas. The plaintiff also accompanied petitioner Abbas Beary, and as proceeded in the Reserve Forest, the Plaintiff told this defendant that he had something to say against Forest guard Laxamana Purusha but this defendant requested him to wait in the Traveller's Bungalow at Vittal and he would finish other inspection work meanwhile. But as the Plaintiff persisted in following us this defendant instructed Forest Guard Laxamana Purusha to ask the Plaintiff to go away. Whereupon there was an exchange of hot words between the Plantiff and the said Forest Guard and the Plaintiff attempted to assault the Forest Guard in the presence of this defendant. As this defendant apprehended trouble and obstruction to official duties he sent a report to the Station House Officer Vittal to take action against the Plaintiff and consequently he was charge sheeted by the Vittal Police for an offence punishable under section 353 Indian Penal Code.

3. That this defendant while sending a report to the Vittal Police acted in good faith and without any malice and in due discharge of his official duties and cannot be said to be without any reasonable or probable cause. The conduct of this defendant is not blame-worthy and his action cannot be questioned or impugned as actuated by any malice or ill-will. The parties are perfect strangers to this defendant and he cannot have any malice or ill-will whatsoever. This defendant acted in good faith and without any malice while setting the law in motion against the Plaintiff.

4. That the charge against the plaintiff under sec. 353 Indian Panel Code failed and the plaintiff was acquitted in C.C.No.55/53 on the file of the Stationery Second Class Magistrate, Puttur, as there were some discrepancies in the prosecution evidence with regard to the scene of offence and the prosecution evidence was not enough to prove an offence punishable under Sec. 353 Indian Penal Code beyond all

reasonable doubts. The mere fact of acquittal by the Criminal Court does not tantamout to malicious prosecution.

5. This defendant neither intended to shield his subordinates nor instigated the Vittal Police to lay a false charge-sheet against the plaintiff. All the plaint allegations to this effect are basless and unjustified and are denied herewith.

6. That as this defendant acted in good faith and in due discharge of his duties to enforce the provisions of the Madras Forest Act, this suit against this defendant is barred and opposed to Section 61 of the Madras Forest Act, 1882 (Madras Act V of 1882)

7. The notice issued on behalf of the plaintiff under section 80 C.P.C. is neither valid nor sufficient.

8. That the plaintiff has not suffered any damages and the quantum of damages claimed is excessive.

9. That the plaintiff has no cause of action for this suit and is not entitled to any reliefs in this suit.

10. That all other allegations in the plaint not specifically traversed herein are denied.

11. It is therefore prayed that the plaintiff's frivolous suit be dismissed with compensatory costs of this defendant.

Camp:
Date 1st Defendant Adv. for Govt.

I, 1st defendant Durairaj, K. Assistant Conservator of Forests, do hereby declare that the facts stated above are true to the best of my knowledge and belief.

Camp:
Date: 1st Defendant.

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S.No.525/1953.

Between

H.V. Rasquinha — Plaintiff

versus

Dorairaj and another — Defendants.

Written statement of 2nd Defendant the State of Madras filed under Order VIII Rule 5/C.P.C.

The defendant abovenamed states as follows:

The plaintiff's suit is unjust and unsustainable in law.

2. That the 1st defendant as Assistant Conservator of Forests in the course of his official duties sent a report to the Vittal Police apprehending trouble and obstruction to official duties when the plaintiff assaulted the Forest guard Laxmana Purusha after an exchange of hot words between them in the presence of the 1st defendant. The said report was sent bonafide and in good faith, and in due discharge of his official duties and without any malice whatsoever and hence, cannot be said to be without any reasonable or probable cause. The conduct of the 1st defendant in sending a report to the Vital Police against the plaintiff in the course of his official duties is not reproachful or blame worthy and the said action of the 1st defendant was bonafide and in good faith and not actuated by any malice whatsoever.

3. That the charge against the plaintiff for offence under section 353 Indian Penal Code failed and the plaintiff was acquitted in C.C.No.55/1953 on the file of the Spry.II Class Magistrate, Puttur as there were discrepancies in the prosecution evidence with regard to the scene of offence, and the Prosecution evidence could not prove an offence under section 353 I.P.C. beyond all reasonable doubts. The mere fact of acquittal by the Criminal Court does not tantamount to malicious prosecution.

4. The 1st defendant neither intended to shield his subordinates nor instigated the Vittal Police to lay a false charge sheet against the Plaintiff and all the Plaint allegations to that effect are baseless and unjustified and have been duly denied by the 1st defendant.

5. That as the 1st defendant acted in good faith and in due discharge of his duties, to enforce the provisions of the Madras Forest Act, the suit is barred and opposed to section 6 of the Madras Forest Act, 1882 (Madras Act V of 1882).

6. That the notice issued on behalf of the Plaintiff under section 80 of the Code of Civil Procedure, 1908 (Central Act V of 1908), is neither valid nor sufficient under law.

7. That the plaintiff has not suffered any damages and at any rate the quantum of damages claimed by him is excessive

8. That the plaintiff has no cause of action for this suit and is not entitled to any reliefs in this suit.

9. That this defendant, the State of Madras, is not a necessary party to this suit which is an action based on torts

p.t.o.

This defendant is not responsible for liable for the tortious acts of any of its subordinates and without prejudice to the above contentions, if the action of the first defendant is construed against him he alone should be personally held responsible and the State is not at all responsible for the personal acts of its subordinates.

10. That all other allegations in the plaint not specifically traversed herein are denied.

11. It is therefore prayed that the plaintiff's suit be dismissed with compensatory costs of the defendants.

Advocate for Government.

Madras
-3-54 Second Defendant.

I, A. Mahalingam Chettiar, Collector of South Kanara do hereby declared that the facts stated above are true to the best of my knowledge and belief.

Mangalore
-3-1954. Second defendant.

/True copy/

Two drafts

Draft I

Agri C III

Sa Memo No 38632 C III/54-1 D) 27.3.54

Subj:- Suits - (South Kanara) - OS No 525/53 on the file of the Dt Munsif, Puttur - CC No 55/53 on the file of the Stg Sub Magistrate Puttur - Malicious prosecution for damages - Sanction - Requested.

Ref:- From the Bd of Rev PP RT No 1456 D) 22.3.54

The attention of the C.C.F is invited to the reference cited copy sent to him direct by the Bd of Rev and he is requested to off & his remarks, if any, on the recommendation of the Collr of S. Kanara in his letter No A3. 21701/53 D) 11.3.54

26.3.54

27/3/54

To the C.C.F

2.4.54

Draft II

Memo No 38632 C III 54-2 D) 27.3.54

Subj:- As at 'A' above.

Ref:- From the Bd of Rev PP RT No 1456 D) 22.3.54

File bearing CM No 4336/53-C4 of the Dt Forest Office, S. Kanara said to have been erroneously sent.

~~S Kanara~~ Bd's refree. cited with the ~~Govt's~~ ~~Lr No A3/21731/53~~ ~~D 11.3.54~~ ~~said to have been enclosed with it~~ has not been received by the Govt. The Bd of Rev is requested to send the file very urgently.

26/3/54

27/3/54

26/3/54

To
The Bd of Rev

note — Please the ref from the Bd of Rev on p1 cf. The remarks of the C.E.E in the drafts would appear essential. Subject to orders the draft memoranda on pp 1-2 above are submitted for approval.

26/3/54

27/3/54

26/3/54

Agri C III

Pl. issue a routine note to all other sections
BD 3/4/54

Very urgent

Memo No 38632 C III/54-3 Dt 3.4.54

Sub:- Suits (South Kanara) O.S. No. 525/53 on the file of the Dt Munsif, Puttur - CC No. 55/53 on the file of the Stg Sub Magistrate Puttur - Malicious prosecution for damages - Defence - Sanction of -

Ref:- Govt memo No 38632 C III/54-1 dt 27.3.54

The C.C.F is requested to expedite his reply to the memo cited and to state before 15.4.54 when it may be expected.

BD 3/4/54
3.4.54

To
The C.C.F.
N.R.D. - 15.4.54

Note:- Attention is invited to the letter from the Bd of Rev on pp 15 of in reply to the memo on pp 13-14 of. The file bearing CN. 4336/53-C4 of D.F/B South Kanara

has not been received by the Govt (Enquiries the Sections also) The C.C.F maybe reminded for his reply to the memo orp/13 ef. A draft memo is submitted for approval orp I above. After issue further search will be made for the missing file in question by sending a reminder note will be to all Sections to state whether they have 1/4/54 received the file in Chance and if so, to send it to this section.

8D
3/4/54

3.4.54

SPECIAL.

MADRAS FOREST DEPARTMENT
Ref.No.1930/54-D1, dated 9.4.1954.

From
Sri V.V.Subramanian, I.C.S.,
Chief Conservator of Forests,
Madras-5.

To
The Secretary to Government,
Agriculture Department,
Fort St.George, Madras.

Sir,

Sub: Suits - (South Kanara) O.S.No.525/53- on the file of the Dt.Munisiff - Puttur C.C.No.55/53 on the file of the Stationery Sub Magistrate Puttur - Malicious prosecution for damages - Defence - Sanction.

Ref: (1) Boards Proceedings Rt.1456/54, dt. 22.3.54.
(2) Government Memo.No.38362-C.III/54-1, (Agriculture) dated 27.3.1954.
(3) Government Memo.No.38362-C.III/54-3, (Agriculture), dated 3.4.1954.

===

I submit that under para 3 of Section & 76(11) of the Madras Forest Department Code, I sanctioned provisionally the defence at public expense of Sri K.Dorairaj, Assistant Conservator of Forests, Nilambur, the first defendent in the suit referred to above.

2. In the circumstances reported by the Collector of South Kanara, I recommend that Government may be pleased to sanction the defence of the suit and to approve after due scrutiny the draft written statements, as requested by the Collector of South Kanara.

9.4.54

for CHIEF CONSERVATOR OF FORESTS.

Law Department

G.O.Ms.No. 108 Dated 3.5.54

LEGAL ASSISTANCE - South Kanara district - O.S.No.525 of 1953 on the file of the Court of the District Munsif, Puttur- Durai Raj Sri K - Asst. Conservator of Forests and the State of Madras represented by the Dt. Collector of South Kanara, first and second respondents - Defence - Sanctioned.

Read:-

- Letter from the Collector of South Kanara to the Secretary, Board of Revenue, Ref.A3.21771/53 dated 11-3-1954.
- Memo. No.38632-CIII/53-3, Agri., dt. 3-4-1954.
- Letter from the Chief Conservator of Forests, Ref.No.1930/54-DI dt.9-4-1954.

--

ORDER

Government sanction the defence of the State of Madras represented by the Collector of South Kanara, second defendant in O.S.No.525 of 1953 on the file of the Court of the Dt.Munsif, Puttur.

2. Govt. also sanction the defence, at State cost, of Sri K.Durai Raj, Asst. Conservator of Forests, Nilambur, first defendant in the suit mentioned above. This sanction is subject to cancellation or revision after the conclusion of the proceedings.

3. The Pleader ~~for~~ during Govt.work at Puttur is requested to appear on behalf of the defendants in the suit mentioned above.

4. The draft written statements to be filed on behalf of the defendants in the suit mentioned in paragraph 1 above is/are approved as amended. A Clean copy each of the draft written statements is enclosed.

To the Collr. of South Kanara. (with enc)
Copy to the Pleader doing Govt.work, Puttur.
,, the Chief Conservator of Forests, Madras.
,, Accountant-General thro' Finance.
,, Agriculture Dept.
,, Home Dept.

(Contd.)

In I Appeal - South Kanara District - O.P.No.525 of 1953
on the file of the Court of the District Munsif, Kattur -
Petition - Order - Petition for payment of Security and
Costs - Petition filed by the District Collector
of South Kanara, Mangalore - Petition allowed - Time granted
- Petition -

I. Report etc.

C.F.No.3.III. Dated the 3rd May 1954.

Read the petition of the Collector of South Kanara, to the Government, Proc. No. B.2177/53 dated 11-5-1953.

Letter from the Collector of Forests, Lr. No. 38050-C/II/53-3, dated June 1954.

Letter from the Chief Conservator of Forests, Lr. No.I.1733/Part I dated 12-5-1954.

Order:

In this petition the Collector of South Kanara has requested by the Collector of South Kanara, a court fee amount in O.P.No. 525 of 1953 on the file of the Court of the District Munsif, Kattur.

2. The Government also sanction the following, to be paid, if any, out of the Forest Development Fund, namely, the Court fee amount in the said suit. This petition is only to be filled in the Kattur Court.

3. The Collector of South Kanara is requested to inform the petitioner accordingly.

4. The Collector is requested to send a copy of the order passed in the said suit in original to the Government.

(By order of the Governor)

K. Balakrishna,
Deputy Secretary to Government.

To

The Collector of South Kanara (with enclosure)
Copy to the Planter (Silviculture) Kattur.
" to Chief Conservator of Forests, Madras.
" to the Accountant General, Madras.
" to the Silviculture Assistant.
" to the Head Assistant.

Forwarded/By order

Section Officer.

Under Secretary.

20,002—8-5-53.

ORDER PAPER.

LAW Department.

Subject. Legal Assistance - South Kanara district - O.S.No.525 of 1953 on the file of the Court of the District Munsif, Puttur - State of Madras represented by the District Collector of South Kanara and Dorairaj(Sri) K., Assistant Conservator of Forests,Nilambur - Defendants 2 and 1 respectively - Defence - Sanction of.

Recommendations of Circulating Officer. The defence of the State of Madras represented by the Collector of South Kanara, and of Sri K.Durairaj, Assistant Conservator of Forests,Nilambur, defendants in O.S.No.525 of 1953 on the file of the Court of the District Munsif, Puttur, may be sanctioned and the Pleader doing Government work at Puttur may be requested to appear in the suit on their behalf.

1.5.54

Orders of Ministers.

(1) M. (F & E). 2.5.54

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

If orders passed in the Cabinet, Decision of Cabinet.

Ref.A2.21771-53. S. anara Collector's office,
Mangalore dated 11.6.54.

From

Sri A.Mahalingam Chettiar, I.A.S.
Collector of South Kanara.

To

The Secretary to Government
of Madras
Law Department.
Madras

Sir,

Sub: South anara district-O.S.No.525 of 1953 on the file of the District Munsif of Puttur- Dorairaj Sri K- assistant Conservator of or st and the state of Madras represented by the Collector of South Kanara- Defence sanctioned- records- requested.

Ref: 1. My report Ref.A2.21771-53 dated 11.6.54, to the Board of Revenue.
2. G.O.Ms (Law Department) No.108 dated 3.5.54.

The following records submitted to the Board of Revenue along with my report cited have not been received back along with the G.O. cited above. I request that the may be sent to me at an early date.

LIST OF RECORDS.

1. File bearing C.No.4610-53-C1 of the Dt.Forest Officer, South Kanara containing pages 1 to 122.
2. File bearing C.No.4330-53-C1 of the Dt.Forest Officer S.Kanara containing pages 1 to 80.
3. Records of C.C.55/53 on the file of the Stationary Sub Magistrate Puttur.

for Collector

To The Secretary, Board of Revenue, Land Revenue Clepauk.

ASSISTANT SECRETARY
15 MAY 1954
LAW DEPARTMENT MADRAS

Revenue Department.
Subject.

SUITS - O.S.No. 525/53 on the file of the District Munsif - Puttur Suit filed by H.V. Rasquinha against Sri Dorairaj - Assistant Conservator of Forests and the State - Result of trial - intimated.

Station: Madras. **L.Dis.(F)2164/55** Dated **17-5-55**

From

Sri W.R.S. Sattianathan I.C.S., Commissioner of Land Revenue and Development.

--

To

Sri P. Sivasankaran Pillai I.A.S., Secretary, Board of Revenue, Madras.5.

--

Read:- **From the Collector of South Kanara A3-Spl.CB.12/54 dated 30-4-55.**

L.DIS:

Submitted to Government.

FOR SECRETARY

To

The Deputy Secretary to Government, Law Department, Madras.(With enclosures in original)

K.E.17-5-55

Ref.No.Apl.v.D.15/54. Southern Collector's Office,
Kurnool, dated 20--4--1955.

From

Sri A.Ahmmad,B.A.,
Collector of Southern Zone.

To

The Dy.Secretary to the Govern...,
[illegible],
Fort St.George,
Madras-9.

Sir,

The Secretary to the Board of Revenue,
Land Revenue,Chepauk,
Madras-5 (in duplicate)

Sir,

Sub :- ...s.No.108 of 1954 on the file of the District Munsif Kottur - Suit filed by V.Venkatasubbaiah and others Sri Dorairaj Assistant Conservator of Forests and the other - Result of trial - intimated.

--:o:--

Ref:-G.O.Ms.No.108 Land dated 3.3.54.

--:o:--

In G.O.Ms.No.108 Land dated 3.3.54 the Government sanctioned the defence of the suit of ...ers represented by the Collector of South Arcot a second defendant in O.S.No.220/53 and also of Sri K. Dorairaj Assistant Conservator of Forests Villupuram first defendant in the suit at Govt. cost. The trial of the above suit took place on ...-3-55 and 15.3.55and the judgment was delivered on 12.4.55. The court has dismissed the above suit for damages against both the defendants with costs. I have asked the Pleader for Government to apply for a copy of the decree in the above suit.

Yours faithfully

2-5-55
for Collector.

Law Depth

Memo No: 7006/55, dated 7-7-55

Sub:- Legal Assistance - O.S. No: 52 in the file of the Dt. Munsif, Puttur - Suit filed by Rasquinha against Sri. Dorai Raj, Asst. Conservator of Forests and the State - Suit - dismissed with Costs - Recovery of.

Ref:- From the Bd. of Rev. A. Dis (F 2164/55 dt. 17.5.55.

The attention of the Bd. of Rev. is invited to the reference cited and the Bd. is requested to state whether a copy of the decree in the suit mentioned above has been obtained and whether any steps have been taken to recover the costs awarded in the suit.

11/7/7 Jamil

p 1 of

9.7.55

7.7.55
6.7.55

6.7.55

To

The Bd. of Rev.
(L. R)
Madras

Law P

Memo no: 7006/55-2 dated 13.8.55

Sub: Legal Assistance - C.S. No: 525/53 on the file of the Dr Munsif Puttur - Suit filed by Ramanna against the Asst. Conservator of Forests and the State - Suit dismissed - Decree of Court -

Ref: 1) From the Bd. of Rev. A.Dis(P) 2166/55 dated 17.5.55.

2) Govt. Memo No: 7006/55-1, Law, dt. 7.7.55.

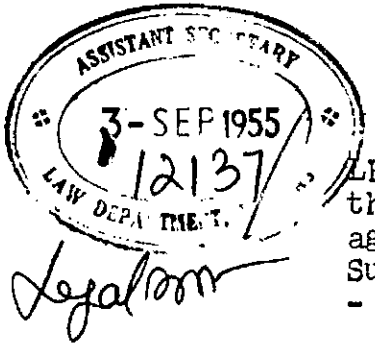
The attention of the Bd of Rev is invited to the reference cited (second) and it is requested to expedite its reply in the matter.

13.8.55

14.8.55

8.8.55

Sec. to Govt (L.R)



REVENUE DEPARTMENT
Subject

LEGAL ASSISTANCE - (South Kanara) - O.S.No.525/53 on the file of the District Munsif's Court, Puttur - Suit filed by Rasquina against the Assistant Conservator of Forests and the State - Suit - Dismissed - Recovery of costs.

- -

Ref.No.A.3787/55-1,

Station; Madras. Dated 24th August 1955.

From

Sri V.N.Kudva, I.C.S., Commissioner of Land Revenue, Commercial Taxes & Prohibition.

--

Sri P.Sivasankaran Pillai,I.A.S., Secretary, Board of Revenue (L.R.), Madras.5.

-- Law Department.

Read:-Government Memo.No.7006/55-1 Law, dated 7-7-55.
Board's Ref.F.No.4207/55-1, dated 15-7-55.
From the Collector of South Kanara, Ref.A3-Spl/CB-12/54, dated 3-8-55.

--

REFERENCE:

Submitted to the Government.

2. The further report promised by the Collector of South Kanara is awaited.

for Secretary.

To

The Secretary to Government, Law Department, Madras.
The Collector of South Kanara.

PVV.27.8.

Copy of letter No.Ref.A3-3[illegible]1.[illegible].12/54, [illegible] - 6 from the Collector of South Kanara to the Secretary, [illegible], Madras.

Sub:- Suits - O.S.[illegible].525/53 on the [illegible] District Munsif, Puttur - Suit filed by [illegible] DoraiRaj, Assistant Conservator [illegible] of Madras - Dismissed with costs - [illegible].
Ref:- Board's Ref.4207/[illegible]-1, dated [illegible].

--

The Pleader for Government, Puttur, has represented [illegible] the certified copies of the decree and [illegible] so far not sent them. I have issued a [illegible] to do 27-7-55 to send them very urgently. I shall [illegible] and judgment to the Board [illegible] Government [illegible] receipt of the Pleader for Government, Puttur [illegible] to recover the cost awarded to Government.

2. A copy of G.O.Ms.No.[illegible], dated 3-[illegible] enclosed.

(--) [illegible]
for Collector.

Copy to the Government, Puttur. He should send the certified copies of the decree and judgment in the above suit by return post.

--

/True copy/

PVV.28.8.

for Secretary.

Ref 30/8

L/Etc

REVENUE DEPARTMENT
Subject

Suits - O.S.525/55 on the file of District Munsif Puttur suit filed by H.V.Rasquinha against Sri Dorai Raj - Asst.Conservator of Forests and the State of Madras - dismissed with costs -interim report submitted.

Ref.A. No. 3987/55-2 Station:-Madras, Dated 29-9-55.

From

Sri M.V. Subramaniam, I.C.S., Commissioner of Land Revenue and Development.

Sri.P.Sivasankaran Pillai, I.A.S.,
Secretary, Board of Revenue (L.R.), Madras.5.

**

ASSISTANT SECRETARY
6-OCT 1955
13870
LAW DEPARTMENT, MADRAS

Read:- Government Memo No.7006/55-1 Law dated 7-7-55.
Board's Ref.A.3987/55-1 dated 24-8-55.
South Kanara Collector's Ref.A.3. Spl.CB.12/54 dated 18-9-55.

REFERENCE:

Submitted to Government in continuation of Board's reference second cited.

2. Further report on the recovery of cost awarded to Government from the Collector is awaited.

for Secretary. 4/10/55

To

The Secretary to Government,
Law Department.
The Collector of South Kanara.

PLG/29/9.

12

Copy of Ref.A.3.Spl.CB.12/54 dated 18-9-55 from the Collector of South Kanara

...

Suits O.S.No.525/53 on the file of District Munsiff Puttur -suit filed by H.V. Rasquinha against Sri Dorai Rai, Asst.Conservator of Forests and the State of Madras - dismissed with costs.

Collector's Ref.A.3.Spl.CB.12/54 d/3-8-55.
Board's Ref.A.3787/55-1 d/24-8-55.
Letter dated 10-9-55 from the Pleader for Govt, Puttur.

...

The Pleader for Government, Puttur informs me that the certified copies of decree and judgment in the above suit, which were applied for by him long ago are not yet ready. A copy of his letter is ~~enclose~~ enclosed. They will be submitted to the Board as soon as they are received from the Pleader for Government, Puttur.

/true copy/

Copy of letter from the Pleader for Govt.Puttur addressed to Try.Dy.Collector South Kanara.

...

O.S.No.525/53 on the file of the District Munsif of Puttur submission of certified copy of decree and judgment.
Ref: Spl.CB.12/54 Your special D.O.letter d/7-9-55.

...

I had applied for certified copies of the decree and judgment in the above suit long ago. The certified copies of decree and judgment are not yet ready. As soon as the certified copies are received by me from the Court, I shall submit the same to the Collector.

/true copy/

for Secretary.

PLG/29/9.

Revenue Department
Subject:

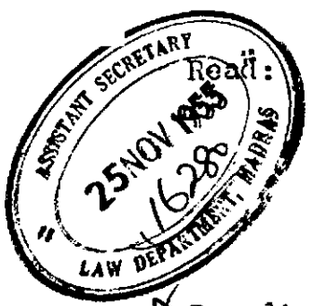
13

SUITS - O.S. 525/55 on the file of the District Munsiff, Puttur suit filed by H.V.Rasquinha against Sri.Dorai Raj - Asst.Conservator of Forests and the State of Madras - Dismissed with costs.

Ref.A.3987/55-3 dated 12-11-55.

Sri.M.V.Subramanian, I.C.S., Commissioner of Land Revenue and Development.

Sri.P.Sivasankaran Pillai, I.A.S., Secretary, Board of Revenue (L.R.) Madras.



Read:
1. Govt.Memo No.7066/55-1 Law dated 7-7-55 — 5 mpr
2. Board's Ref.A.3984/55-1 dated 24-8-55
3. Collector of South Kanara Ref.A3 Spl.cb 12/54 d/18-9-55
4. Board's Ref.A.3987/55-2 dated 29-9-55
5. Collector of South Kanara Ref.A3. Spl. CB 12/54 dated 21-10-5

Submitted to the Government in continuation of Board's reference 4th cited.

Further report on the recovery of Court costs is awaited from the Collector. 16

For Secretary. 24/11/55

The Secretary to Government,
Law Department.
The Collector of South Kanara.

Copy of Ref.A3.Spl.C.B.12/54 dated 21-10-55, from the Colle South Kanara.

SUITS - O.S.No.525/53 on the file of the District Munsif Puttur - Suit filed by H.V.Rasquinha against Sri Durai Raj, Assistant Conservator of Forests and the State of Madras - Dismissed with costs - Certified copies of decree and Judgment - Submitted.

Ref: 1. This office Ref.A3.spl.C.B. 12/54 dated 30-4-55, 3-9-55 and 17-9-55.
2. Board's Ref.No.A.3787-55-1 dated 24-8-55.

I enclose herewith the certified copies of the decree and Judgment in the above suit for Board's reference. I am taking steps to recover the court costs awarded to the defendants in the suit.

(True Copy

For Secretary. 24/11/55

RP 18/11/55

In the court of the District Munsif of Puttur S.K.

Present: Sri.K.Vittal Kamath, B.A.,B.L., Dt.Munsif

Tuesday the 12th day of April 1955.
Original suit No.525 of 1953.

Between:

H.V.Rasquinha son of A.S.Rasquinha, Vittal Kasba, Merchant, P.O.Vittal, S.Kanara. Plff.

and

1.Sri K.Durai Raj, Assistant Conservator of Forests, Nilambur Division, S.Malabar) Defts
2. The Province of Madras, represented by the Collector of S.Kanara, Mangalore.)

Plaint presented on 10-12-1953.

Suit for Rs.1100/- claimed by way of damages for malicious prosecution of plff. by deft. 1 (without probable and reasonable grounds) in C.C.No.55/53 on the file of the II Class Magistrate, Puttur, it is alleged that the plft was acquitted in the Criminal case, and for the mental pain and damage, suffered by him and he has filed this suit.

Value of claim Rs.1100-0-0

Cause of action arose on 5-12-52, 24-7-53, 1-9-53 and 15-9-53 at Vittal Kasba, Puttur taluk.

Decree: This suit coming on this day for final disposal before me, in the presence of Sri H.Pundarik Bhak, Vakil for plff, of Sri H.S.Shetty, advocate and Government Pleader for defts 1 and 2, it is hereby ordered and decreed as follows:

1. That this suit be and hereby is dismissed; &
2. That the plff do pay defts Rs.79-8-0 for costs with interest at 5½% p.a., from this date till date of payment.

Cost of suit.	Plaintiff	Defendant.
1. Stamp for plaint	Rs.119-15-0	
2. " for power	1- 0-0	1-0-0
3. " for petitions		1-8-0
4. " for exhibits	1- 0-0	
5. Process fee	1-15-0	
6. Process writing fee	0- 8-0	
7. S.A. and T.A. to witnesses	3- 8-0	
8 Pleader's fee	77- 0-0	77-0-0
Total	204-14-0	79-8-0

Given under my hand and the seal of the court, this 12th day of April 1955.

K.VITTAL KAMATH,
Dist.Munsif.

(True Copy)

In the Court of the District Munsif of Puttur.

Present: Sri.A.Vittal Kamath, B.A., B.L., Dt.Munsif
Tuesday the 12th day of April 1955
Original suit No.825 of 1953.

Between:

H.V.Rasquinha — plaintiff

&

1. Sri.K.Durai Raj
2. Province of Madras, represented by the Collector of South Kanara. — Defendants.

This suit coming on the 29th day of March 1955 for final hearing before me, in the presence of Sri M.Purushotham Bhat, vakil for the plff, and of Sri. H.Sanjiva Shetty, advocate for the defts and having stood over for consideration till this day, the Court delivered the following Judgment:-

Suit for Rs.1100/- claimed as damages for malicious prosecution.

2. The material plaint allegations are as follows: 1st deft was the Assistant Conservator of Forests in S. Canara in December 1952 and thereafter for sometime. While he was on duty, and while he was camping in Vittal, in his official capacity, he had taken a statement from the plff on 4-12-52 in connection with the enquiry of the petition filed by one Ukkuda Abbas Beary against Forester Abbas and Guard Lakshmana Purusha, who were alleged to have taken illegal gratifications, and permitted or connived at felling of trees from the Kalanjimale Reserve Forest of Vittal Range. The 1st deft on 4-12-52 directed plff to appear before him at 8 a.m. on 5-12-52 at the 27th mile stone near the Reserve. In obedience to the direction, he and Abbas waited like that. When deft 1, the said guard and Forester entered the Kalanjimale reserve Forest, the plff and Ukkuda Abbas followed the 1st deft as desired by him the previous day to show the stump of the illicitly felled trees. When they followed like that in the Reserve at about 8-30 a.m. on 5-12-52 the guard Lakshmanan Purusha fearing that the stumps of the illicitly felled trees would be pointed out by Ukkuda Abbas, accosted the plff. in threatening and insulting way and asked him to clear out of the Reserve. The plff replied that he was there as directed by deft.1 and the guard had no right to abuse, threaten or command him to clear out. Ukkuda Abbas refused to accompany deft.1 and his staff unless the plff was with him. There was exchange of hot words between uKKuda Abbas, and Lakshmana Purusha. The 1st deft permitted the plff and Ukkuda Abbas to leave the Reserve Forest and they went away. Nothing else was happened at 8-30 a.m. in the said Reserve Forest or at any time that day. But the 1st deft instead of acting bonafide and proceeding with the enquiry sent a false and malicious report against the plff to the Vittal Police on 5-12-52 hushing up incidents as they happened with a view to shield the guard, and Forester Abbas from the acts complained against his subordinates. Without any probable or reasonable ground, the said report was sent to the Police under Section 353 I.C.P. with a request to arrest the plff. The Vittal Police filed a charge sheet on 26-12-52 registered as C.C.55/53 on the file of IInd Class Magistrate, Puttur, but he was acquitted. The 1st deft. malaciously prosecuted the plff. without proper and reasonable grounds and he had suffered damages as a result of the same. The plff is entitled to Rs.1100/- as damages - from the deft. or such of them as is liable. Deft.2 is a necessary party as deft.1 in his official capacity as public servant and Forest Officer committed these acts under colour of his office.

3. In his written statement, 1st deft contends that he had camped at Vittal between 1-12-52 to 5-12-52 in connection with his official duties, that he has asked the petr. Ukkuda Abbas to meet him at the 27th mile stone, near Kalinjimale Reserve Forest limit on 5-12-52 in connection with the enquiry into the allegations

in his petition filed by him against the Forester Abbas and Forest Guard Laxmana Purusha. Ukkuda Abbas met him accordingly. He with the petr. Abbas and Lakshmana Purusha and Forester Abbas proceeded to the Reserve Forest. The plff also accompanied the petr Abbas. As they were proceeding in the Reserve Forest, the plff told this deft. that he had something to say against the guard Laxmana Purusha but he requested him to wait in the Traveller's Bungalow at Vittal and he would finish other inspection work meanwhile. The plff persisted in following them and so he instructed the Forest Guard Laxmana Purusha to ask the plff. to go away. Whereupon there was exchange of hot words between them and the plff. attempted to assult the Forest Guard in the presence of this deft. As this deft. apprehended trouble and obstruction to official duties, he sent a report to the Station House Officer, Vittal, to take action against plff. and consequently he was charge-sheeted. He acted in good faith and without malice and in the due discharge of his official duties, in sending his report. It cannot be said that it was done without reasonable or probable cause. The mere fact of acquittal in the Criminal Court does not tantamount to malicious prosecution. The plaint allegations to the effect that he intended to shield his subordinates or instigated the Vittal Police, to file the charge sheet are all baseless. The suit is barred against him and opposed to Section 61 of the Madras Forest Act 1882. The notice issued under Section 80 C.P.C is neither valid nor sufficient. The quantum of damages claimed is excessive.

4. 2nd deft. contends that the State of Madras is not a necessary party in this suit, which is an action based on Torts, and the State is not at all responsible for the personal acts of its subordinates. The other pleas are similar to those raised by deft.1 in his written statement.

5. The following issues were framed for trial.

1. Was the prosecution against plff malicious and without probable and reasonable grounds?

2. Did the 1st deft. act bonafide and in discharge of his duties?

3. Is the suit notice not valid and sufficient?

4. Is the 2nd deft a necessary party?

5. Has plff. suffered any damages and if so, what amount is he entitled to?

6. What reliefs?

ADDITIONAL ISSUE:

7. Whether the suit is opposed to and barred under Section 61 of Madras Forest Act?

6. Issues 1 and 2: The 1st deft. K.Durai Raj, who is at present D.F.O of Kollegal Division was the Assistant Conservator of Forests in +S.Kanara, in December 1952 till about April 1952. One Ukkuda Abbas, examined as P.W.3 had sent a petition to D.F against Forest Subordinates, Forest guard Laxmana Purusha and Forestor Abbas alleging that they had taken illegal gratification and permitted or connived at felling of trees from the Kalanjimale Reserve Forest in Vittal Range. The 1st deft was camping at Vittal from 1-12-52 to 5-12-52 in connection with the enquiry of the allegations made in the petition. On the 2nd December he examined P.W.2 generally in connection with the illicit felling of trees from the Reserve

Forest and so on. From the evidence of D.W.1 it is seen that on the 4th December 1952 the present P...l plff in this suit volunteered to give a statement to the 1st deft herein in connection with the complaint of Ukkuda Abbas and he was examined at Vittal Traveller's Bungalow, when Ukkuda Abbas was there in the vicinity of the Travellers Bungalo . The Forester Abbas and Guard Laxmana Purusha were also there when he was examined and they cross examined him..That is seen from his evidence at page 15. The 1st deft admittedly has directed the petr. Ukkuda Abbas to meet him at the 27th mile stone on the Mangalore Kasargod Road, near the Reserve at about 8 a.m. on 5-12-52. That was in connection with inspection of and stamp enumeration work to be carried out in connection with the alleged illicit felling of trees from the Reserve Forest. Admittedly both P.W.1 and Ukkuda Abbas were found to be present at that spot on 5-12-52 at that hour, then 1st deft. with Forest Guard Laxmana Purusha, Forester Abbas and another Forest Venkatramana came there. The two versions as given by P.Ws on the one hand and the 1st deft. on the other as to what happened subsequent to that, differ materially. That point will be discussed later on. But the plff's case in the plaint is that the 1st deft. on 4-12-52 had directed him also to come next day near the Reserve and so he and U. Abbas waited like that; when 1st deft. followed by his party had entered the Reserve Forest himself and Ukkuda Abbas followed him, as desired in the previous day to show stumps of the illicit felled trees. Then the Guard Laxmana Purusha fearing that U.Abbas would point out the illicitly felled trees in the presence of plff threatened and talked to him in an insulting way and asked him to clear out of the Reserve and the plff retorted to him in a proper way, Ukkuda Abbas refused to accompany 1st deft and even the plff was with him. Exchange of hot words took place between Laxmana Purusha and Ukkuda Abbas and the 1st deft. thereafter permitted the plff and Ukkuda Abbas to go away. According to him nothing else happened in the said Reserve Forest that day. The 1st deft.'s case in the written statement is that he had gone to the Reserve Forest that day in connection with the enquiry in hand and in that connection he had only asked Ukkuda Abbas to meet him at the 27th mile stone, that plaintiff was also found present with Ukkuda Abbas, that when he and his subordinates proceeded towards the Reserve, the plff was also found accompanying the petr. Abbas. His further case is that as they were proceeding into the Reserve Forest, the plaintiff told him that he had to say something against the guard Laxmana Purusha; he requested him to wait in the Traveller's bungalow at Vittal and he would finish the inspection work meanwhile. Even then the plff. persisted in following them. According to him, at that point he instructed Forest Guard Laxmana Purusha to ask the plff to go away. Then Laxmana Purusha did so, there was exchange of hot words between him and the plff. and the plff attempted to assault and he apprehended more trouble and obstructions to his official duties, and so he sent a report to the Station House Officer, at Vittal as per the original of Exht.A1. His further case in the evidence is that this report was sent when plff and Ukkuda Abbas were present. He also made a request for Police aid to get P.W.1 arrested. Thereafter the Vittal Police charge sheeted the plff. under section 353 I.P.C., and after trial in C.C. 55/53 on the file of the S.D.M. Puttur, plff. was acquitted as seen from Exht A2. After that plff has filed the suit for damages for malicious prosecution against the 1st deft as well as the State of Madras the 2nd deft.

7. Before discussing the evidence, it would be useful to summarise the evidence of the witnesses on the facts which led to the incident on 5-12-1952 at about 8-30 a.m. in the Kalanjimale Reserve Forest. P...s have spoken to other things about ~~the con~~

about the currupt nature of the Forest Guard, Laxmana Purusha, Forester Abbas and others. It is unnecessary to deal here about those matters as those are not necessary for the purpose of this suit. At page 5 of his evidence, P.W.1 says that D.W.1 gave notice to Ukkuda Abbas that he should be present on 2nd Dec.1952 regarding the enquiry about his petition. His own evidence was recorded on 4-12-52. Then he wanted a copy of the statement recorded by 1st deft and 1st deft got wild and said something; the evidence of P.W.1 given as to what D.W.1 said at that time appears to be artificial and got up for the occasion to put forward some reason as to why 1st deft should bear malice against him and to put forward some ground to support his case that he was also asked to be present the next day near the Reserve Forest. P.W.1 stated further that he and Abbas were told to be present near 27th mile stone the next day and so they were present there. Afterwards both Ukkuda Abbas and himself followed 1st deft and his subordinates into the Forest by about half a furlong. 1st deft was in advance of all of them by about 5 or 6 yards. At that moment guard Purusha said that he (P.W.1) was responsible for all this, and he should not go into the Reserve Forest and that he should get out. P.W.1 told him that he had come there as per direction of 1st deft and only if 1st deft asked him, he would go out. Then he says there was exchange of hot words between Ukkuda Abbas and Laxmana Purusha and that Abbas asked who he was to tell him to go back when they had been asked to come there by 1st deft. Then Laxmana Purusha turned round and came towards Abbas and Abbas was proceeding towards Laxmana Purusha abused and Abbas then warned him to be careful. 1st deft. then asked what the 'galata' was. P.W.1 told him then that Abbas only need come and P.W.1 need not come. For that Abbas said he along would not come without P.W.1 and without Potail he would not proceed. .Then 1st deft told him if they were not proceeding further, they could go. At that time Ishwara Bhatta, P.W.2 had come there in connection with some business of his own with 1st deft. When 1st deft told them as above, both P.W.1 and P.W.3 returned back and some time later Ishwara Bhatta also came on bicycle. He denies that there was any quarrel or assault or attempt to assault Laxmana Purusha in preventing his duties. P.W.1 further says that on the same day 5-12-1952 he came to know that 1st deft. had sent a report to the police and as soon as he came to know of it he came to Puttur sent a petition to the Collector through his lawyer (pages 12 of P.W.1's evidence). He further says that 1st deft. got angry against him because he had applied a copy of his statement. He also says something more that he had told deft. 1 that the trees might have been cut with the knowledge of the superiors and so he must have had malice against him. In the course of cross examination, he admits that 1st deft had come to Vittal camp, for the first time then, that he did not know him till then, and there was no reason for 1st deft. to have malice against him till then. He admits that he (P.W.1) had not sent any petitions against the guard Purusha and Forester Abbas. He is a friend of U.Abbas after he sent the petition. He denies that he went on the 5th because he was a friend of Abbas. Then he states as follows at page 16 "1st deft had gone to the forest on duty in connection with his duty of enquiry into the petition. 1st deft asked U.Abbas to show the stumps of trees cut. It is not true that Forester Abbas and guard Purusha had come there to enumerate stumps (witness hesitates) Laxmana Purusha had hammer with him to hammer-mark the stumps. I say that I do not know while entering the Reserve Forest I represented to 1st deft something about the Forest Guard Purusha. It is not true that at that stage 1st deft told him to come to Travellers' Bungalow in the evening and I need not come. He only said that I need not come. It is not true that I continued to follow them even after that. It is not true at that state 1st deft asked Purusha to come out of the Reserve Forest. When forest guard Purusha asked me to go out, I got wild". Then he denies that there was quarrel between him and Purusha, or he lifted his hand to beat Purusha. He was says that he was not present when the report was sent to the Police stat

He admits that there was exchange of words between him and Guard Purusha. He does not know whether enumeration work was stopped because of the quarrel. Then again he says "quarrel between Ukkuda Abbas and Guard Purusha took place after I and Purusha quarrelled". He then came to Puttur for 10 a.m. but as he got prepared a petition and read Mangalore bit the petition and then one Sundara Naik told him that there was a complaint against him filed by 1st defendant, and then he came to Puttur again on 6-12-52 and consulted Sri H. He denies that Sri Shastri D.W.2 was not present on the spot at the time of the incident. Only at the time of the re-examination, an attempt was made by him to say that he had no talk with the defendant before the quarrel, though he had made a clear statement in cross examination that while entering the Reserve Forest, he represented to him about the Forest Guard Purusha and at that time defendant told him he need not come. Unwittingly he has blurted out the truth that his talk with the 1st deft when they were entering the forest and before the alleged quarrel took place.

8. P.W.3 is Ukkuda Abbas. He also says that he had talking on 5th December 1952 with P.W.1 at the 27 mile stone at the request of the 1st deft made to him on 4-12-52. 1st deft had asked him on 4th to show stumps next day and asked him to get P.W.1 also then. On the 5th December 1952 they went half a furlong into the forest. Then Laxmana Purusha told P.W.1 not to come saying that he was doing all these things. P.W.1 retorted guard Purusha and then P.W.3 himself told P.W.1 to be careful. Guard Purusha told him if he talked he would get his teeth out and that happened when 1st deft was about 10 marus in advance. 1st deft turned back and asked what the galata was. On being told by P.W.1 that he was being insulted, 1st deft told him that he need not come. P.W.2 also then told deft 1 that if P.W.1 was not come, he would not come and 1st deft told him that if he was not willing, he also need not come. In the course of cross examination he says that he had been asked to come there because he was the peon. He says that because of that, he was asked to bring P.W.1 as some 'gramastas' were also necessary then. 1st deft had asked him to bring P.W.1 saying that Potail need not be present. He had doubts that 1st deft might not enquire properly and so he wanted the 'Grahastas'. He had been asked to come to point out the stumps of trees. He does not know whether p.w.2 Ishwara Bhatta had been examined in connection with his petition. P.W.2 came 5 minutes after they reached the 27th mile stone. They had all gone to enumerate the stumps. But he does not know whether Lamis had come to stamp the stumps. He denies that 1st deft asked P.W.1 not to come when he represented something to him and that happened while 1st deft was proceeding towards the forest, but he admits (page 7) that then 1st deft had stated that P.W.1 need not come to show the stumps and he p.w.3 alone need come. But later on he changed his story that 1st deft had asked p.w.1 not to come after the galata and not before. His story is that exchange of words passed between himself and the guard Purusha and not between P.W.1 and the guard. He is unable to explain why 1st deft complained against p.w.1, if the quarrel was between himself and the guard Purusha. Then he admits because of the galata, the enumeration work was not done. P.W.2 Ishwara Bhatta speaks about some other complaint he had given about which he had been examined on 2-12-1952. He says that he had gone to P.W.3 on the 5th morning to meet 1st deft and because he had been told deft 1 had gone, he went to 27th mile stone. He had also gone along with others into the forest; when they had gone 5 or 10 marus into the forest Lakshmana Purusha told P.W.1 that he was doing all this and he should not come. He speaks about the incident in the manner similar to the one given by p.w.1. In the course of cross examination he says that he had gone to the 27th mile stone on the 5th

to known what had happended to his complaint. His complaint was against one Annappa Bhandary, who is his bitter enemy. He had gone to the 27th mile stone in search of 1st deft to know when 1st deft would auction the trees seized as per his complaint. He denies that he had not at all gone on the 5th morning to 27th mile stone. He alone had gone from the Bungalow to the 27th mile stone and went on bicycle. He had not said as per Exht. B.1 before the S.S.M., where he has clearly stated himself p.w.1 and Ukkuda Abbas went together from Vittal, where had he met p.w.1 and Ukkuda Abbas.

9. As against this, the 1st deft had examined himself as D.W.1 He denies that p.w.1 had asked him for any copy of the statement on the 4th and so he got annoyed; so he did not bear any malice for that alleged ground. He did not know p.w.1 or his parties before that who were strangers to him. He had not asked p.w.1 to meet him on the 5th at the 27th mile stone nor had he asked Abbas to get p.w.1. P.W.1's presence was not necessary for the enquiry then. He had asked only Ukkuda Abbas to meet him near the 27th mile stone in connection with the inspection of stumps about which allegations had been made in the petition. Laxmana Purusha wa beat guard in charge of that beat and forester Abbas was also on duty. So they had come on that day, as their presence was necessary. The guard Venkataramana had also come on duties in connection with the enumeration. All of them were on duty and his subordinates were in uniform. P.W.1 was also present with Ukkuda Abbas at the 27th mile stone, but p.w.2 was not there. But somebody else was there along with p.w.1 and p.w.2. P.W.2's presenc was not necessary in connection with the enquiry. If really p.w.2 was present he would not have mentioned in Exht. A.1 that another gentleman was present. but would have mentioned about the presence of p.w.2 whom he knew. Before entering that reserve forest, p.w.1 came and told him that he had got something to tell about Laxmana Purusha. He (deft.1) told him that he was going for specific purpose for inspection of illicitely felled stumps and if he has got anything to say he could come to the T.B. later and represent there. But he (p.w.1) persisted in following them. He told him a second time not to follow. As soon as they entered the reserve forest he saw p.w.1 entering it. So he asked Laxman Purusha to tell him to go away and the guard did accordingly. He did so on his asking to do so, and not on his own initiative. Then p.w.1 got infuriated. There was exchange of hot words between p.w.1 and LaxmanPurusha and p.w.1 abused and guard and guard got angry and raised his hand to give him a blow. Then there was a commotion and so he could not go on with his work which he had to stop. As the commotion was going on, he sat there and sent therefore Exht.A.1 to the police as he apprehended trouble. When he sent the report both p.w.1 and p.w.3 were there. P.W.3 refused to go with him afterwards saying that he cannot come unless p.w.1 and the other gentlemen who was also present there come with him. When Laxman Purusha left with the report p.w.1, p.w.3 and the other gentlemen also left. He sent the report in good faith and without malice and he did so, in bonafide discharge of his official duties. He further says he did not know the antecedents of p.w.1, before he sent the report to the police. The second time when he asked p.w.1 not to come inside the reserve was just when he entered the reserve. Only after that he asked Purusha to ask him not to enter p.w.1 was then 10 yards within the Reserve Forest and he was 15 to 20 yards from him. The altercation took place about 15 yards inside the reserve area and about 200 yeards from the 27th mile stone. Usually hammers have to be brought by his subordinate. He and his subordinates were on their way to the place of felling of trees when the incident took place. The enquiry held by him was a departmental enquiry.

10. From what he stated above, it is clear that the two versions about the incident which took place inside the Reserve forest differ materially. There cannot be any doubt that the incident did happen inside the reserve forest about 10 to 15 yards inside. Even the case of p.w.s and the plff in the plaint is also to that

effect. This place where the incident took place is about 200 yards from the 27th mile stone near the Reserve. The deft has put forward his version of the incident even in his written statement. If 1st deft's version is believed, then there is no case for the plff, because it was he who had persisted in entering the reserve forest in spite of the 1st deft asking the Forest Guard Purusha to ask him not to come and on his doing so, p.w.1 got wild and there was exchange of words. In this connection, it has to be pointed out that in his evidence p.w.1 admitted that he did not talk to D.W.1 before they entered the forest and that he wanted to talk to him as regards the guard Purusha, and then it was that D.W.1 todd him that he need not come. The attempt made by p.ws. that no such talk really happened is falsified by some what similar admission made by p.w.3 also. Hence p.w.1's case that it was he who had asked the guard Purusha to tell p.w.1 not to proceed further into the forest Reserve is a true story. If, then the guard Purusha had asked p.w.1 not to proceed further into the Reserve Forest as per the direction of 1st deft, Purusha was fully justified in what he did in obedience to the order of his superior and cannot be found fault with. If d.w.1's version is believed, it follows that he had not asked p.w.1 to be present on the 5th at the time of the enumeration of the stumps of the illicitly felled trees and p.w.1 had come on his own initiative, just because he was the person behind the entire incident, possibly because he had instigated Abbas to send up a petition without himself coming forward in doing that thing and because Abbas himself did not know what to do during the enquiry p.w.1 as well as another person was also present to assist Abbas in pointing out the stumps of illictly felled trees. If p.w.1 himself knew much about cutting of trees, it is likely that he himself had to do something with that. It is an admitted fact that it was p.w.1 who had produced before deft 1 sheet numbers 10 to 12 of the Forest Map during this enquiry in connection with the petition filed by Hassan Abbas. That p.w.1 volunteered to make a statement before deft 1 in connection with an enquiry into p.w.3's petition and produced the above documents and persisted in entering the Reserve under an excuse that he was also asked to come there, shows that he probably had a hand in this illicit felling of trees. It is hard to believe that he could catch hold of those documents purely with sole intention of booking the corrupt Forrest subordinates i.e. guard Purusha and Forester Abbas. It may be that he had to do something with the illicit felling of the trees and was friendly with the Forest guard, but he fell out with them because the Forest guards were conniving at the illicit felling of the trees by others as well. To me it appears that p.w.1 has done all these things with the intention of putting down the corruption in the lower ranks of the Forest Department. From the evidence of p.w.s themselves, it is seen that p.w.3 Thaha Abbas was not at all inclined to enter alone the Reserve Forest, because he feared that something would happen to him. If he had any such fear then that he would have mentioned; that to the deft.1 even the previous day; possibly because he did not know where the illicitly felled stumps complained of were, but p.w.1 knew about it. P.w.1 and the other person alleged to have been present insisted upon their presence also at the time of inspection, so that they might point out the stumps and D.Abbas could escape the task of pointing out the stumps. As p.w.s had to give some explanation, they have put forward that story than even P.W.1 also had been asked to come for pointing out the stumps of the illicitly felled trees, about the time the complaint had been filed only D.Abbas.p.w.1 admits he got wild when guard purusha asked him not to proceed further as per the direction of 1st deft. It is not possible to believe that in spite of the fact that 1st deft got wild, he did not exchange hot words with guard Purusha, when he persisted in going further into the forest when 1st deft did not want him to come. On the other hand, after seeing p.w.1 in the witness box, it does appear to me that he is definitely a person who would not stop at all and exchange hot words, but even go to the extent of attempting to assault the Forest Guard against whom he had got wild. If really it was not p.w.1 who had quarrelled and had even raised his hands either to prevent guard Purusha pushing him out or to assault

the guard, it is not explained satisfactorily why 1st deft should have complained against p.w.1 alone and not against U.Abbas, who it is alleged had exchange of words with guard Purusha. The fact that soon after the occurance 1st deft. sent the report only against p.w.1, is a strong indication that the quarrel and commotion was started by p.w.1 and not p.w.3 Abbas. The absence of any report against U.Abbas indicates that he probably had not participated in the quarrel, which took place between p.w.1 on one hand, and Forest Guard Laxmana Purusha on the other.

The report sent from the spot without any delay shows that facts alleged there cannot be false. As pointed out already by D.W.1 if p.w.2 was really present at the time of the incident, his name would have been found in the reports, where it is only described that "another gentleman had come there" and not this p.w.2 whom 1st deft had examined on 2-12-52 and knew him well. It would appear to me that the ommission of the name in the report of that gentleman has been taken advantage of by the plff. to catch hold of this p.w.2 who also had complained against the Forest subordinates and made him to depose as defence witness in the Criminal case and as p.w.2 in this case. His evidence before the Sty.Sub.Magistrate is to the effect that he and p.w.1 and p.w.3 went together from Vittal to the Reserve Forest where as the story now stated is that he had alone gone there later. Evidently he appears to be friend of p.w.1 and and has come forward to assist his case. Apart from the evidence of D.W.1 P.Ws themselves admit that d.w.1 and his subordinates had gone to the Reserve Forest on duty and they were on duty at the time of the incident; the work in connection with the work enquiry which D.W.1 was holding at that time, was obstructed and stopped, because of this incident. There is no doubt, therefore, that the quarel had not only obstructed the 1st deft from discharging fre the above official duties, but he had to suspend his work from the time being because of the stubborn attitude taken by p.w.1 insisting upon entering the Reserve Forest, inspite of 1st deft asking him not to do so, and because of the quarrel started by p.w.1. Admittedly 1st deft was stranger to this District and did not know p.w.1 before he went over to Vittal and examined him on 4th December 1952. Admittedly D.W.1 had no ground for bearing any malice against p.w.1. In the plaint there is not even a whisper as to why 1st deft bore any malice against him. There is nothing mentioned that 1st deft bore malice against p.w.1 because of the alleged refusal to grant him copy of the statement of p.w.1 recorded by 1st deft on the 4th. The story that p.w.1 had also stated that the illicit felling of trees was going on with the connivance of the superior officers of the Forest department appears to be a story just put forward at the time of trial. Considering the evidence and the circumstance, I am inclined to believe that the deft sent the report to the police in good faith without any malice towards p.w.1 and he did so in bonafide discharge of his official duties, and that the incident as spoken to by D.W.1 and reported in Exht.A.1 is substantially true and is far nearer the truth than the story put forward by p.ws. as regards the incident, which took place inside the Reserve Forest on 5-12-52, I am inclined to believe that in allprobability that p.w.1 who had lost temper and got wild had even raised his hands t assault the Forest Guard Laxmana Purusha when the very guard against whom he had complained was showing his power to ask him and to proceed further inside the Reserve area, as per the direction of 1st deft, who had a right to prevent p.w.1 from entering the Reserve Forest as he was not the petitioner, as it was p.w.3 who had complained against Forest subordinates. The fact that p.w.1 came to Puttur immediately and sent a petition to the Collector and had come to know about the report Exht.A.1

sent to the police on the same day i.e. 6-12-52, as admitted by himself shows that the report had been sent when p.w.1 p.w.3 were present there and had left the place only after Exht.A.1 was forwarded to Vittal Police. The story that he told him in Mangalore about the report cannot be believed as true.

11. The finding of the learned Sub. Magistrate in the Criminal case or the reasons for acquittal of the accused in that case is of not much value in this case. The plff. herein has to prove independantly, first that he was innocent and his innocence was pronounced by the Magistrate; secondly that there was want of reasonable and probable cause for the prosecution or that the circumstances of the case were such as to be in the eyes of the Judge inconsistent with the existence of a reasonable and probable cause, and lastly that the criminal proceedings were intiated in a malicious spirit i.e. with improper notice and not in furtherence of justice. The plff. must fail if he fails to prove any one of these points. The reason given in the judgment in the criminal case cannot be looked into in the civil suit. If the plff. fails to prove the circumstances which were inconsistent with the existence of reasonable and probable cause for the prosecution, he must fail in this suit, considering the evidence and the circumstances I have no hesitation to find on issue 1, that the prosecution against the plff was not malicious and not without reasonable and reasonable grounds, and on issue 2, I find that the 1st deft. acted bonafide and in discharge of his duties.

12. Issue 3: the suit notice is valid and sufficient.

13. Issue 4 and 7: The damages claimed against 1st deft on the basis of his liability to do so under torts. Section 61 of the Forests Act lays down that no suits shall lie against any public servant for anything done in good faith under this Act, and as per this section all forest officers shall be deemed to be public servants. Since I have held that the enquiry 1st deft was holding in connection with the allegation made in p.w.3's petition was in his official capacity he is protected under Section 61 for anything done in good faith in the course of his official duties. 1st deft was justified in sending the report to the police against the plft which is held to be subsequently true and indications are that it is cent per cent true. The suit against 1st deft is therefore barred under Section 61 of the Madras Forest Act. Issue 7 is answered accordingly. It necessarily follows that 2nd deft is an unnecessary party to the suit. Issue 4 is answered accordingly.

14. Issue 5: There is no need to give a finding on quantum of damages in view of my findings above. But all the same, what the plff would be entitled as damages in case the suit were to be decreed is as follows: He has paid Rs.100/- to his lawyer in the criminal court as seen from Exht...3. P.W.1 says that he has paid another Rs.50/- to another lawyer Sri.Sripathi Rao. The criminal case had been pending for about 6 months and it is likely that it must have undergone 10 to 15 adjournments. In that connection, as well as for getting the D.W.s from their residence Rs.100/- in all can be allowed. In addition to that he would be entitled to damages for mental pain, injury to reputation and damages for being prevented from attending his daily avocation etc. Rs.250/- as damages will be sufficient. In all he would be entitled to Rs.500/- as damages in case his claim for damages is upheld. But in view of my findings above, the question of awarding any damages does not arise.

25

15. Issue 6: In the result the suit is dismissed with costs. Pleader's fee - One set.

Dictated to the shorthand writer the transcript revised by me and pronounced in open court this 12th day of April 1955.

(Sd)K.VITTAL KAMATH.
District Munsif.

PLAINTIFFS EXHIBITS

A.1	5-12-52	Memo issued by the 1st Deft. to the Station House Officer, Vittal.
A.2	24-7-53	C.C. of the judgment in C.C.55/53 on the file of the II class Magistrate Puttur.
A.3	5-12-53	Receipt granted by Sri.H.P.Bhat to the plff.
A.4	29-8-53	Copy of Regd.notice sent by plaintiff to 1st defendant.
A.5	12-9-53	Copy of regd. notice sent by plaintiff to 2nd defendant.
A.6	1-9-53	Acknowledgment of the 1st defendant.
A.7	15-9-53	2nd "

DEFENDANT'S EXHIBIT:

B.1	22-7-51	Deposition of Ishwara Shastry in C.C.55/53 (D.W.2) on the file of the Sub Magistrate, Puttur.

Plaintiff's witnesses.

1. Sri.H.V.Rasquiña (plaintiff)
2. Sri.Ishwara Bhatta
3. Sri.Abba Beary

Defendant's witnesses:

1. Sri K.Durai Raj (1st deft)

(True Copy)

For Secretary.

R P 18/1/55 k.g./15-11-

REVENUE DEPARTMENT

21

Subject.

SUITS - O.S.No.525/55 on the file of the District Munsif, Puttur - Suit filed by H.V.Rasquinha against Sri Dorai Raj, Assistant Conservator of Forests and the State of Madras - Dismissed with costs - Recovery of court costs - Report - Submitted.

-o-o-o

Law Deptt

By Regd Post
Ack due

Memo No. 7929/54-1 dated 24.5.54

Sub: Legal Assistance - O.S No 525 of 1953 on the file of the Court of the Dt Munsif, Puttur - Sri K. Durai Raj Asst Conservator of Forests - Defence - Sanctioned - Records returned

Ref: 1. From the Bar of Rep, Ref BP.RE No. 145 dt. 22.3.54

2. G.O. No. 108, Law, dt. 3.5.54

3. Letter from the Collector of S. Kanara Ref. A: 3. 21722-53 dt. 11.5.54

The records mentioned below are returned herewith to the Collector of S. Kanara, as requested ~~for by him~~ in his letter third cited. The Collector of S. Kanara is requested to acknowledge receipt of the same.

List of Records enclosed

1. File bearing C.M. 4613-52-C4 of the Dt Asst Officer, S. Kanara containing pp. 1-122
2. File bearing C.M. 4336-53-C4 of the Dt. Asst officer S. Kanara containing pp 1-28.
3. Records of C.C 5-5/53 on the file of the J.S.M. Puttur

To
The Collector of
S. Kanara
Mangalore
(With Enclns.)

Copy to the Bar of Rep: Dpd

Dpd (wo)
By RO. Accdn

...3.13.917/1/53.

...Income Tax Officer,
...ore, ... 22--5--54.

...t V. Jagannadha Rao, B.A.,
...Collector of Bhimavaram.

...ASSISTANT SECRETARY
2 JUN 1954
8910
LAW DEPARTMENT, MADRAS

...ng to Assessment of ...
...Assessment, dras

...-G.I.C.-375 of 53 on the file of the Court
...District ... -31 ... Court for Assistant
...Commissioner of ... - Acknowledgment - Receipt
...receipt - ... dated.

...:-Govt.Memo.No.7914/54/1 (Assessment) dated
24.3.54.

...forwarded herewith ... Government

...duplicate which has been received in this office.

...Yours faithfully

...Income Tax Officer

Libby 31/5 R/31-5

Agri (CIII) dt

Sub Suits - (South Kanara) O.S. No 525/53
on the file of the Dt Munsif Puttur
CCNo 55/53 on the file of the
Stationery Sub Magistrate Puttur -
Malicious prosecution for damages -
Defence - Sanction of -

CNo 38362-CIII/54

P 1 cf

Ref:- From the Bd of Rev, Mem No B2 dt 22.3.55

D 1 cf

From the C.C.F. Pr No 1930/54-A1 dt 9.5.55

To us

This file deals with the request
of the Collr. of S. Kanara to sanction
the defence of the suit in O.S. No 525/53
on the file of the Dt Munsifs Court
Puttur filed by Sri H.V. Rasquinha
of Vittal Casba village, Puttur taluk
against Sri K. Damodar, A.C.F
Nilambur, Madras and the State
of Madras represented by the
Collr. of S. Kanara. The facts
of the case have been explained
by the Collr. in para 2 of his
letter on p.3 cf. A copy of the
plaint will be found on pp. 5-7 cf.
Written Statements to be filed
by the defendants, prepared by the
Govt Pleads, Puttur and Scrutinised
by the Govt Pleader S. Kanara are
on pp. 9-12 cf.

2. The first defendant Sri

is ~~the~~ an A Sbt Conservator of forests and he has committed these acts in his official capacity as a public servant. The State of Madras has been impleaded as a necessary party in the suit. The Coltr. has requested that ~~the~~ defence of the suit at Govt cost may be sanctioned and the written statements to be filed by the defendants may also be approved by the Govt.

3. The C.C.F has stated that he has provisionally sanctioned the defence at public expense of Sri K. Durairaj A.C.F, the first defendant in the suit. He has also recommended the sanction of the defence and approval of the statements.

4. As the Party impleaded in the suit is a Govt servant and as he had committed these acts in the discharge of his official duties this dept may support the request of the Coltr. The orders in this regard have to issue in the Law Dept. This file may therefore be transferred to Law Dept for further action.

13.4.54

14/4/54

15/4/54

Law (Legislative)

Agri no 38362 C1/54

15-4-54

Law no 6184

RDS-40PP

Please see the reference from the Board of Revenue on page 1 c.f., the enclosures thereto at pages 3 to 12 c.f., the letter from the Chief Conservator of Forests on page 19 c.f. and the note of Agriculture Department on pages 1-2 ante.

2. The file relates to sanctioning the defence at State cost of Sri K.Durai Raj, Asst. Conservator of Forests, Nilambur and the State of Madras represented by the Collector of South Kanara defendants 1 and 2 ~~respond~~ respectively in O.S.No. 525 of 1953 on the file of the Court of the Dt. Munsif, Puttur.

3. The facts of the case are briefly as follows:-

Sri K.Durai Raj, first defendant, while he was Asst. Conservator of Forests, Puttur during December 1952 was camping at the Vittal Travellers' Bungalow from 1-12-1952 to 5-12-1952 in connection with an enquiry into certain allegations against two subordinates of the Forest Department. On 5-12-1952, while Sri Durai Raj with the subordinate was going into the reserved forest, the plaintiff Sri H.V.Rasquinha followed them against ~~his~~ instructions. When Lakshman Purusha, one of the forest guards, on instructions from the A.C.F., asked the plaintiff to go out of the reserved forest, the plaintiff abused him and attempted to assault him. Thereupon the A.C.F. sent a note to the Station House Officer, Vittal, for Police aid. After holding investigations, a charge-sheet was filed against the plaintiff in the Court of the Stationary Sub Magistrate, Puttur. The case, however, ended in acquittal of the accused Rasquinha. ~~Thereupon~~, Sri Rasquinha has filed the ~~present~~ suit against Sri Durai Raj and the State of Madras represented by the Collector of South Kanara claiming damages

to the extent of Rs.1,100/- for alleged false and malicious prosecution. It is reported that the C.C.F. has provisionally sanctioned the defence of the A.C.F. The C.C.F. and the Collector have requested for sanction of the defence of the accused at State cost. Agriculture Dept. also agree with the above recommendation.

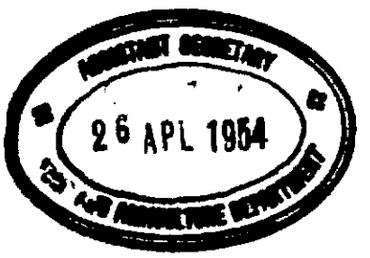
4. The A.C.F. appears to have acted bona fide and in the discharge of his official duties. His defence at State cost may therefore be sanctioned. The defence of the State of Madras represented by the Collector of South Kanara also may be sanctioned.

may be sanctioned
6)
23/4

5. The draft written statements to be filed on behalf of the defendants have also been forwarded by the Collector for scrutiny. Some alterations have been indicated in pencil thereon. After approval, a clean copy may be sent to the Collector.

6. Subject to orders, a draft order is placed below for approval. Agriculture, Home and Finance may see the draft for acceptance. Agriculture may also be requested to see the draft written statements for remarks, if any.

PAS 19/4/54
SV 23.4.54
23/4/54
Law no 6184/54
24/4/54
24.4.54



Addl. Home
Agri

Notes of Law Dept on pp3-4 above and the draft order below may be perused/ No remarks seem called for
The draft order may be accepted in its draft.

on the draft written Statements on pp 9-12 of the file may be passed on to Home Dept

26.4.54

26/4/54

21.4.54

Home

Home (S I)

58815 E3/225

Agri wo 52730 EIII/54-1

27.4.54

The notes of Law Dept at pp 3-4 ante may be perused. The draft order below may be accepted and the file passed on to Finance Dept.

28/4/54 28/4/54 28/4/54 Fin

Home wo 5886 SCS I/54-1
28/4/54

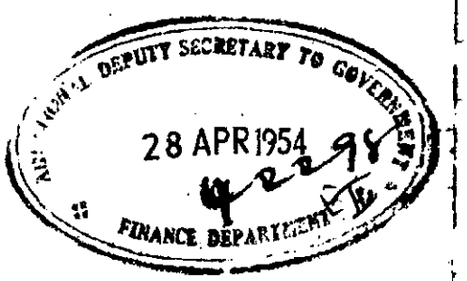
Fin (Sl

The order below may be accepted.

28/4/54

29/4/54

Law

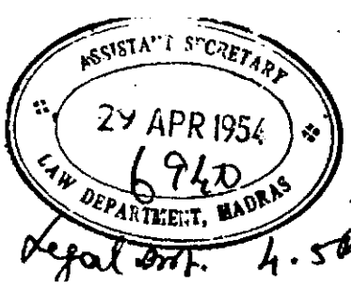


Law

Fin U.O. 42298 EII-1
29-4-54

Note for Circulation. Law Department

The file relates to sanctioning the defence at State cost of Sri K.Durai Raj, Assistant Conservator of Forests, Nilambur, and the State of Madras represented by the Collector of South Kanara, defendants (1) and (2) respectively in O.S No.525 of 1953 on the file of the Court of the District Munsif, Puttur. The facts of the case have been briefly set out in paragraph 3 of this Department's note at pages 3-4 ante. As the Assistant Conservator of Forests



Legal Asst. 4.5.54

has been impleaded for acts done by him in the discharge of his official duties, it is proposed to sanction his defence and the defence of the State of Madras represented by the Collector of South Kanara and to request the Pleader doing Government work at Puttur to appear on their behalf in the said suit. The proposals and the draft order below, have been accepted by Agriculture, Home and Finance. Agriculture have also accepted the draft written statements to be filed on behalf of the defendants.

For orders whether the draft may now issue.

AMS 30/4/54

SV 30.4.54

SB 30.4.54

D.S.C.

The draft may issue
Krishnaswamy,
1.5.54

M.(F+G). Lakshmanamurti
2.5.54

Sent by D.O. ... 3.5.54

Law Dept.

CN. 7929/54

Sub: Legal Assistance - Cas No. 525 of 1953 on the file of the court of the Dt. Munsif Pattur - Dorairaj Sri K - Asst. Conservator of Forests - defence - sanctioned - Records - Return of.

Ref: Letter from the Collector of S. Kanara, Rc. No. A3. 21773-53 dt. 11.5.54.

Please see the letter from the Collector of S. Kanara at P/CF.

The Collector has requested for ~~the return of the~~ that records submitted to the Govt with his request for sanction of state defence to Sri K. Dorairaj Asst. Conservator of Forests in O.S. No. 525/53 on the file of the court of the Dt Munsif, may be returned to him. The Govt of Kar. forwarded those records to Govt. with its reference at P/CF/(Y) for sanctioning the defence of the defendant Asst Conservator of Forests. The defence of the defendant in the above suit was sanctioned in G.O. No. 108, Law dated 3-5-1954.

(Y)

The records referred to by the Collector at A on P/CF may be for returned to him.

The draft memo below is

for approval

PAS
23/5/54

SV
23.5.54

AV
24/5/54

Joint Memo No 7929/54-1 dt. 24.5.54

Letter from the Collector of S.Kanara No. A3-4777/53 dt. 29.5.54

The letter from the Collector of S.Kanara acknowledging receipt of the records returned to him with the Govt memo at page 3 may be perused.

No further action is necessary in these papers. They may be added to the G.O relating to the case viz. G.O.Ms No 108, Law dt. 3.5.1954

I think D.S (?) need not be bothered about this

PAS
11/6/54

SV
11.6.54

AV
16.6.54.

1006/53

Law Deptt

Subj:- Suit - O.S.No: 525/53 on the file of the Dt. Munsif, Puttur - Suit filed by Rasquinha against Sri Desiraj - Assistant Conservator of Forests - Result - intimation of.

Ref

From the Bd. of Rev. L.Dis.(F) 2164/5 dated 17.5.55.

Please see the report of the Bd. of Rev. at p/cf. and the enclosure thereto at p 3 cf

In G.O. Ms No: 108 dated 3.5.54, this Dept. sanctioned the defence of the Collector of S.Kanara and the Asst. Conservator of Forests, Nilambur who had been impleaded as defendants in O.S No: 525 of 1953 on the file of the Court of the Dt. Munsif, Puttur. The suit was filed by one Rasquinha claiming damages for malicious prosecution.

The Bd. of Rev. has reported that the suit was dismissed with Costs. The Collector has reported that he had asked the pleader doing Govt. work at Puttur to apply for a Copy of decree in the suit. Copies of the Judgment and decree may be available till 26.6.55.

26.5.55

26.5.55

26.5.55

27.5.55

Please see the L.O. orders above. As No report has been received from the Bd. in the matter the Bd. of Rev. may perhaps be asked to state whether a copy of the decree has been obtained in O.S. No: 525/53 and whether any steps have been taken to recover the

Costs awarded in the Writ.

Subject to orders, a draft memo to the Bd. of Rev. is submitted for [illegible]

7.7.55
6.7.55

6.7.55

7-7

[Issued as Memo No 7006/55 Law dt 6.7.55

No reply has so far been received from the Bd. of Rev. to the Dept's letter. The Bd. may be reminded once more.

Subject to orders, a draft reply submitted below for approval

8.8.55
11.8.55

13.8.55

(Issued Memo No: 7006/55 Law, dt 13.8.55

Please see the reply received from the Bd. of Rev. at p9c/ to this Dept's memo at p5c.

In the circumstances stated, the further report from the Bd. of Rev. may be awaited till 30.9.55.

7.9.55.
7.9.55

6.9.55

(From the Bd. of Rev. Cf. A.398,

Please see the ref. Bd. of Rev. at p11c. and the draft at 12c.

In the circumstances stated further report from the Bd of Rev. awaited till 30.11.55.

1.12.55
7.12.55

7/10/55

p13 ✓ (From the Bd. of Rev. No: A.3987/53-3 dt. 12-11-55)

Please see the reply from the Bd. of Rev. on p 13 ✓. and the enclosures thereto to this Dept. memo on p 5 ✓.

Bd. of Rev. has forwarded a copy of the judgment in O.S. 525/53 on the file of the Dt. Munsif, Puttur. which may be perused. p 15-25 ✓

Bd. has further reported that ~~that~~ the further report on the recovery of Costs awarded in the suit is awaited from the Collector. B. on p 13 ✓

The further report may be awaited till 5-1-56 or till the receipt of the report whichever is earlier.

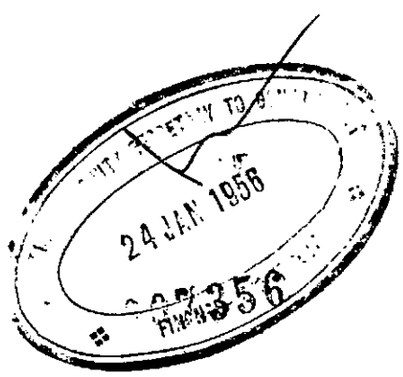
6.12.55 — 6.12.55

A 52 — 6/12/55

p 27 ✓ (From the Bd. of Rev. No: A 3987/53 dt. 3-1-56)

Please see the further report furnished by the Bd. of Rev. on p 27 ✓.

The B Collector has reported that the Costs awarded in O.S. No: 525 of 1953 on the file of the Dt. Munsif's Court, Puttur, have been recovered and remitted to the Sub-Treasury at Puttur under chalan No: 658 dt. 13.12.55. No further action seems necessary. The papers may be closed and added to Rec. at (2) after perusal by Fin.



RW No 7006/55-1
23.1.56

19.1.56 — 19.1.56 — 23.1.56 — 23.1.56 — Fin.

4

Fin: (Accts

The note of the law dept on
~~p 3~~ may be perused. ~~and returned~~
(The costs awarded by the Court have been
recovered and remitted into the
Sub-Treasury at Cuttack).

6
31.1.56
K
2.2.56.

2/2/56

Law Dept

Fin U.O. 7356 dt 1/2/56

The note of finance above
may be perused.

no action is called for. The
papers may be added to Leo. at (Z).

ASSTT. SECRETARY
4 FEB 1956
1814
LAW DEPARTMENT T. [illegible]

Legal Asst.

1.2.56.

6.2.56.

7.2.56